IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.697 of 2006

Shri Ramnath Govind Ugalmugale Petitioner
Vs.
Smt.Sarubai Govind Ugalmugale & ors. Respondents

Mr.S.M.Sabrad for petitioner.
Ms.Sharvari Shailendra h/f. Mr.P.S. Dani for resp. nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.
June 21, 2006.

P.C.

. Heard Mr.Sabrad, the learned counsel for the petitioner and Ms.Sharvari Shailendra with Mr.Dani for respondent nos.1 and 2, the original plaintiffs.

. This petition under Article 227 of the Constitution arises from the order dated 29/10/2005 passed by the learned Jt.Civil Judge, Junior Division at Niphad rejecting the application at Exhibit 80 filed in RCS No.259 of 2000.

. The said application was filed by the present petitioner-defendant no.1 praying for two preliminary issues regarding res judicata and limitation. The trial Court noted that by the earlier order dated 22/1/2002, the issues were framed at Exhibit 38 and the Issue Nos.5 and 6 are in respect of res judicata

and limitation. If that be the case, the application at Exhibit 80 filed by the defendant no.1 could have been decided and rejected only on that ground by observing that the issues sought to be framed were already framed and would be decided after the parties record their evidence and along with all other issues. However, the learned Judge of the trial Court in para 12 of the impugned order proceeded to adjudicate on issue no.5 regarding res judicata. This is an error apparent on the face of the record which requires to be corrected.

. The petition is, therefore, disposed off with directions that issue nos.5 and 6 will be decided afresh along with all other issues after the parties record their respective evidence - oral as well as documentary and the observations made by the learned Judge of the trial Court in para 12 of the impugned order would not be taken into consideration while deciding the said issues. Trial of the Suit is expedited.

(B.H.MARLAPALLE,J.)